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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JAVON LAMAR TORBERT,

Defendant and Appellant.

D069362

(Super. Ct. Nos. SCD252984,
SCD258197)

APPEAL from a judgment of the Superior Court of San Diego County,
Timothy R. Walsh, Judge. Affirmed.

John L. Staley, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Following the denial of his motion to suppress evidence, Javon Lamar Torbert
entered into a plea agreement. Under the terms of the agreement Torbert pleaded guilty
to two counts of identity theft of 10 or more individuals (Pen. Code,¹ § 530.5,

¹ All further statutory references are to the Penal Code unless otherwise specified.

subd. (c)(3)). He also admitted a strike prior (§ 667, subds. (b)-(i)) and one prison prior (§ 667.5, subd. (b)). The remaining charges and allegations were dismissed.

Prior to sentencing, Torbert requested new counsel be appointed to file a motion to withdraw his guilty plea. That motion was denied. Torbert was then permitted to represent himself. Torbert then filed a motion to withdraw his guilty plea, which motion was denied. Torbert was sentenced to a determinate term of six years four months.

Torbert filed a timely notice of appeal, but did not obtain a certificate of probable cause (§ 1237.5).

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), indicating he has not been able to identify any reasonably arguable issue for reversal on appeal. Counsel asks this court to review the record for error as mandated by *Wende*.

Torbert has filed his own supplemental brief on appeal. We will discuss the supplemental brief below.

STATEMENT OF FACTS

The convictions in this case arise from two separate criminal cases which were filed in a consolidated information.

1. Case Number SCD252984

On December 18, 2013, Torbert was stopped for a bicycle violation. During the encounter the officer seized a backpack that Torbert had abandoned. The search of the backpack revealed mail, checks and a wallet containing identifying information for a number of people.

2. Case Number SCD258197

On August 24, 2014, police saw Torbert break into a car owned by another person. Torbert took property from the car. A search of Torbert revealed methamphetamine and personal identifying information for another person. A later search of Torbert's residence produced personal identifying information for nine people.

DISCUSSION

In Torbert's supplemental brief, he raises a number of issues, primarily based on alleged facts outside the record. Further, since this appeal follows a guilty plea and the trial court declined to issue a certificate of probable cause, Torbert cannot raise many of the issues for the first time on appeal.

Torbert contends his counsel was ineffective in the manner in which the case was investigated and presented in court. Those matters are outside the record and can be reached, if at all, by petition for writ of habeas corpus. (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-268.)

Torbert also contends the prosecution withheld exculpatory evidence prior to the preliminary hearing. Whether or not such allegation is correct, the information was disclosed, and involved pre-plea proceedings which are not cognizable on an appeal from a guilty plea, especially where there is no certificate of probable cause (§ 1237.5). Likewise, the contention that joinder of the two cases was prejudicial is not cognizable on this appeal, and does not appear to have been raised in the trial court before the guilty plea was entered.

As to Torbert's contention the section 1538.5 motion should have been granted because of delayed disclosure of a witness prior to the preliminary hearing, he has not identified any authority for such contention.

In short, we have reviewed the record in light of Torbert's contentions in his supplemental brief. We have not discovered any arguable issues for reversal on appeal based upon the contentions in the supplemental brief.

As we have discussed, appellate counsel has not been able to identify any reasonably arguable issue for reversal on appeal. Pursuant to *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified possible issues to assist this court in our review of the record.

1. Whether the trial court erred in denying Torbert's motion to suppress evidence?
2. Whether the trial court erred in denying Torbert's motion to withdraw his guilty plea?

We have reviewed the entire record as mandated by *Wende, supra*, 25 Cal.3d 436 and *Anders, supra*, 386 U.S. 738 and have not identified any reasonably arguable issue for reversal on appeal. Competent counsel has represented Torbert on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

O'ROURKE, J.

AARON, J.